

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.544 OF 2007

Along with
Civil Application No.947 of 2007

1) Ahmad Gulam Husen Majgaonkar,
deceased, through L.Rs:-

1A) Jikriya Ahmed Sahab Majgaonkar,
and ors. Appellants.

Vs

1. Mohamed Miya Daud Solkar
and anr. Respondents.

Mr R.M.Nakhawa and Mr V.B.Dhawan, for the appellants.
Mrs G.P.Mulekar, AGP for the respondent-State.

**CORAM : D.B.BHOSALE, J.
DATED : 30th JULY, 2007**

P.C.:

1. Heard Mr Nakhawa, learned counsel for the appellants and Mrs Mulekar, learned AGP for the respondent.

2. This appeal is by original defendants challenging the judgment and order dated 4.4.2007 by which an appeal filed by the respondent-plaintiff has been allowed and a suit has been decreed. The suit was filed for mandatory injunction seeking direction to the defendants to remove the suit construction erected over the suit property. The suit property is a government land which, accordingly to the plaintiff, was kept for the use of fishermen for carrying out repairs of their fishing-boats, for drying fishing nets and for

ancillary use. The defendants have admitted that they have made construction by mistake on the government land, that is, the portion of Gaothan land which is abutting the creek. It has also come on record that the Sub Divisional Officer, by order dated 2.11.1989, had directed the defendants to remove the encroachment and vacate the government land. Even the Tahasildar had issued notice dated 12.8.94 to the defendants requiring them to remove the encroachment as per the order of the Sub Divisional Officer. The defendants also had filed Regular Civil Suit No.16 of 1989 for declaration that they have become owner of the property by adverse possession and for permanent injunction. The said suit was, however, withdrawn by the defendants. It is against this backdrop, Mr Nakhawa, learned counsel for the defendants, raised two contentions. Firstly, a notice under section 80 of the CPC was not issued to the State, which is defendant no.2 in the suit, and secondly, the plaintiff had no locus to file the suit. Insofar as the first contention is concerned, such contention was not raised before the courts below. Moreover, no interim/urgent relief was sought against the State. The first submission, therefore, fails and is rejected as such. Insofar as the locus of the plaintiff is concerned, it has come on record that the plot of land on which the defendant has unauthorisedly made construction, was

reserved for the common use of all fishermen for repairs of their fishing boats, for drying fishing nets etc. Keeping that in view and considering that the order passed by the appeal court is based on the evidence on record and that no substantial question of law is raised, this appeal is dismissed. As a consequence thereof, the civil application is disposed of.

. At this stage, Mr Nakhawa, learned counsel for the appellants, seeks three months time to remove the unauthorised structure on the suit property. Time, as prayed, is granted.

(D.B.BHOSALE, J.)